# The Next Move™

October 2026

Fogarty Partners
CHARTERED ACCOUNTANTS
BUSINESS ADVISORS

IN THIS ISSUE:


- A New Tax on Family Trusts — And What Has Actually Been Announced
- Choose Your Structure for the Sale, Not for the Announcement
- New Build? Split the Loan Before You Sign
- The BAS You Never Lodged Is Worse Than You Think


**Disclaimer for External Distribution Purposes:** The information contained in this publication is for general information purposes only. Professional advice should be obtained before acting on any information contained herein. The receiver of this document accepts that this publication may only be distributed for the purposes previously stipulated and agreed upon at subscription. Neither the publishers nor the distributors can accept any responsibility for loss occasioned to any person as a result of action taken or refrained from in consequence of the contents of this publication.

## A New Tax on Family Trusts — And What Has Actually Been Announced



*Treasury has released the draft legislation. Here is what it says, in plain terms, and what it means for a business or investment held in a family trust.*

From 1 July 2028, income earned by a family trust will carry a minimum tax of 30 per cent. The tax is paid by the trustee. Beneficiaries who receive that income get a credit for it, so nobody pays tax twice on the same dollar.

If everyone who receives trust income is already paying tax at 30 per cent or more, very little changes. The credit covers the trustee's tax and the outcome is much the same as today.

The change is felt where trust income goes to someone on a low rate. A distribution to an adult child at university, or to a spouse who is not working, currently attracts very little tax. From 2028 that same distribution carries 30 per cent, and the credit cannot be refunded to the person receiving it. The saving simply disappears. You will no longer be able to simply distribute to a company unless we make an election.

### What Is Not Caught

A long list of trusts and income types sits outside the new tax. Primary production income is excluded, as is income going to registered charities and deductible gift recipients. Deceased estates are excluded, and so are testamentary trusts set up under a will for genuine estate purposes. Fixed trusts, unit trusts, managed investment trusts and self-managed superannuation funds are not affected at all.

### Two Ways Out, and a Deadline Attached to Each

The Government has offered two alternatives to simply paying the new tax.

The first is roll-over relief. For three years from 1 July 2027 you can move the assets of a trust into a company or a fixed trust without triggering an immediate income tax bill. The relief covers Commonwealth income tax, including capital gains tax.

The second is an election. A trust that exists on 1 July 2028 can nominate the beneficiaries who will receive its income, and the fixed percentage each will receive, and the minimum tax then does not apply. The election can only be made in the 2028–29 year, and only once. It can include a company as a fixed beneficiary.

None of this begins until 2028, but the useful decisions are made well before then. Some of the options depend on entities existing by 1 July 2028, and a trust set up after that date can never make the election at all.

> *If your business, investments or family arrangements sit in a trust, we are already working through what this means for your position and will be in touch. If you would rather not wait, call us. Nothing starts until 2028, but the decisions worth making are made well before then.*

---

## Choose Your Structure for the Sale, Not for the Announcement

*The message accompanying the new trust rules is that there is an easy option with no stamp duty. That is true as far as it goes. It is also the wrong thing to be deciding on.*



When the draft legislation for the trust minimum tax was released, it came with a reassurance. If you do not want to restructure your business, you can simply make an election instead. No restructure, and no state stamp duty.

That is accurate. It is also a very small part of the decision.

The election requires you to nominate, permanently, who receives the income of your trust and in what proportions. Most people looking at this will nominate a company, because that lets profits be retained at the company tax rate rather than taxed at personal rates. On the income side, that is an obvious move.

### The Parts That Matter Most

- The election locks in the percentages permanently. They can only be changed if a nominated beneficiary dies, or on a relationship breakdown between two of them.
- A single distribution that does not match the nomination cancels the election, taxes the whole year's income at the top rate, and it cannot be made again.
- Choosing the election gives up the roll-over relief. Choosing the roll-over gives up the election. You cannot do both.

### The Part That Is Easy to Miss

The election does not stop at income. Whatever percentage you nominate for income applies to capital as well. Nominate a company for 40 per cent of the income and you have also committed 40 per cent of the eventual sale proceeds of your business to that company.

That matters because of how the small business capital gains tax concessions work. Sold out of a family trust, the exempt amounts can generally reach the owners personally, tax free. Where they land in a company, a substantial part cannot be passed on without a further round of tax.

### And It May Still Look Tax Free

Here is the part that is hard to see coming. On a small enough sale, both routes can end up with no tax paid at all. The difference is not the tax bill. It is where the money ends up.

If you are under 55, anything sheltered by the retirement exemption must go into superannuation, so it is not money you can use now. Sold out of a family trust, our café owner has about a quarter of the proceeds preserved in super and the rest in hand. Sold out of a company, and after that company is eventually wound up, closer to two thirds is locked away. The retirement exemption also carries a lifetime limit that is never replenished, and the company route uses roughly two and a half times as much of it on the very same sale.

### A Café, Sold for $400,000

- Sold out of a family trust, the concessions can deliver the proceeds to the owners with no further tax.
- Sold where a company has been nominated for the income, a large share of the exempt amount is caught in the company and costs tens of thousands of dollars to release.
- The election that produced this outcome was made years earlier, for reasons that had nothing to do with the sale.

The same issue arises with the other option. Moving the business into a company means stamp duty may be payable now, in cash, and the company cannot access the same capital gains tax relief on sale that a trust can. The Commonwealth relief covers income tax. It cannot touch state duty, because that is not the Commonwealth's to give.

### The Question to Actually Ask

The right starting point is not which option avoids stamp duty. It is this: what happens when this business is eventually sold, and who will the money need to reach?

For some owners, the answer makes a company entirely sensible. For others, particularly where the business has been built from nothing and its value is almost all goodwill, the structure that saves tax on income each year can cost far more than it saves when the business is sold.

There is time. The election cannot be made until the 2028–29 year and the roll-over runs to June 2030. But the decisions are effectively permanent once made, and some of them depend on arrangements being in place well before 1 July 2028.

> ***Before you choose between the election and the roll-over, let us model what each one does to the eventual sale of your business. Both choices are effectively permanent, and the cost of the wrong one does not surface until you sell. If you operate through a family trust, this is worth a conversation now rather than in 2028.***

---

## New Build? Split the Loan Before You Sign

***Interest on the land is denied. Interest on the construction is not. If the bank has written one loan, someone has to do the sums.***



With negative gearing now quarantined for established dwellings, new house and land has become the sensible play for investors. The numbers stack up. But there is a trap in the first eighteen months that costs people real money, and it comes down to how the bank set up the finance.

### The Land Is Switched Off

The vacant land rules deny deductions for the costs of holding land where there is no completed, usable structure on it. Interest on the money you borrowed to buy the block, council rates, land tax — all switched off. Starting the build does not turn them back on. They stay off until the house can lawfully be occupied and is rented or genuinely available for rent.

### Construction Is Different

The Tax Office accepts that borrowing costs associated with constructing the house are not costs of holding the land. So the interest on your construction drawdowns is deductible while the house is going up, subject to the ordinary rules about borrowing for an income-producing purpose.

That is a meaningful deduction during a period when you have no rent coming in.

### One Loan, One Problem

The difficulty is that most lenders write a single facility covering both the land and the progress payments. When that happens, the interest has to be apportioned between the land component and

the construction component on a fair and reasonable basis, worked out drawdown by drawdown as the build progresses. It can be done, and we do it, but it takes time, it relies on complete loan statements, and it is the sort of calculation that invites questions.

Two separate facilities remove the problem entirely. A land loan and a construction loan give you a clean, self-evident split with nothing to argue about.

### The Denied Interest Is Not Wasted

Interest denied on the land can generally be added to the property's cost base and reduce a future capital gain, though it only works against a gain and cannot be used to create a loss.

One more point worth raising with us early: these rules do not apply to land held by companies, or where the land is used in carrying on a business. Ownership structure changes the answer before the finance does.

> *Talk to us before the loan documents are signed. Two facilities instead of one costs you nothing at the application stage, and it is expensive to fix afterwards.*

---

## The BAS You Never Lodged Is Worse Than You Think

*The GST you collected stays payable indefinitely. The GST credits you are owed disappear after four years.*



Falling behind on your BAS lodgements looks like an administrative problem. Left long enough, it becomes an expensive one, because the GST you collected and the GST you paid are not treated the same way.

The GST you charge your customers stays payable. If a BAS has never been lodged, no assessment has ever been made, so nothing closes the period off. Those old quarters stay open, and the Commissioner can still assess them.

Your GST credits work differently. The GST law says your entitlement to an input tax credit simply ceases four years after the day the BAS it belongs in was due. Not four years from when you get around to lodging — four years from the original due date. Once that day passes, the credit is gone.

### What That Looks Like in Dollars

Take a quarter where a business made sales of $55,000, including $5,000 of GST, and spent $55,000 on business costs, also including $5,000 of GST.

Lodged on time, that BAS nets out to nil. Nothing to pay.

Lodged four years and a day late, the $5,000 you collected is still payable, but the $5,000 of credits has evaporated.

A nil BAS has become a $5,000 debt, plus failure to lodge penalties and general interest charge running from the original due date. Do that across sixteen unlodged quarters and the numbers get frightening.

### The Courts Have Already Looked at This

Taxpayers have argued the point and lost. In one Tribunal case a partnership lodged returns for periods running from 2012 to 2017 in June 2021 and claimed around $16,000 of credits. It said it believed it had been given more time to lodge and had never been told about the four-year limit. The Tribunal accepted that none of that mattered. The entitlement had already ceased, and there is no discretion in the provisions for the Commissioner or the Tribunal to extend it. The ATO confirmed the same strict view in its 2024 ruling on the time limits.

The only real exceptions are where you notified the Commissioner of the entitlement inside the four years, or where fraud or evasion is involved. Being late is not an exception. Neither is a bookkeeper who went quiet or an accountant who did not lodge.

> *If you have outstanding activity statements, anything still inside the four-year window can be saved. Anything outside it cannot. Please call us before another quarter drops off the end.*